

Finally, I would like to say something personally, Senator, and that is this. I look forward to a day when my organization and the members of the CBAC coalition don't have to come before this tribunal or this committee and say to this committee, we need more diversity on the Supreme Court. I look forward to a day when there will be an Asian-Pacific American on the Supreme Court.

I look forward to the fact and hope that my sons don't have to come back here 10, 20, 30 years from now and sit here and make the same statements that I have had to make here today. I do look forward to that day, and until then I think we have to focus again on Judge Breyer's nomination in terms of the impact it has on the persons of color around the country.

I want to thank you and the chairman, and particularly the staff, for allowing us to be heard this afternoon.

Senator KENNEDY. Thank you very much.

Mr. Monet.

STATEMENT OF RICHARD MONET

Mr. MONET. Good afternoon, Senator. On behalf of the Native American Bar Association, I also thank you for the opportunity to present our views on this matter today.

The Native American Bar generally agrees with the sentiments shared by this coalition. Like other racial minorities in our society, Native American people daily confront the effects of racial prejudice and discrimination. However, the Native American Bar has certain concerns that are somewhat distinct from those affecting the other groups in this coalition, and I would like to share just one of those with you today.

As you know, Native Americans not only constitute a distinct race in American society, but as members of tribes they also constitute distinct political entities recognized as such by the United States. Some of our most pressing issues and concerns arise in that capacity. Unfortunately, we know very little of Judge Breyer's sentiments on these matters.

As you also know, the relationship between tribes and the United States flows from solemn treaties made early in the Nation's history. Remarking upon one of those Indian treaties, Justice Hugo Black once wrote, "Great Nations, like great men, should keep their word."

In an early interpretation of another one of those treaties, Justice McKenna penned a sentence of perhaps singular clarity and importance to tribes and the development of Federal law dealing with tribes. He wrote, "Treaties are to be construed as a grant of rights from the Indians, not to them, and a reservation of those not granted."

We ask the committee and the nominee to note how Justice McKenna's wording and logic reflect the words and logic of the 10th amendment to the U.S. Constitution that what is not granted to the Union is reserved to the States or to the people. In other words, like the States and their people, the tribes and their people are the source of their respective tribes' sovereignty; that whatever sovereignty may have transferred in those treaties came from the tribes, so that the tribes were the grantors and thus the reservers of sovereignty. In other words, treaties with tribes, like the 10th

amendment, invoke this Nation's highest principles and logic of Federal republican democracy.

Nevertheless, in recent years the Supreme Court has begun a significant departure from those principles, at least when they are applied to tribes. For example, about 6 years ago in the *Cabazon* decision, the dissenting opinion argued that the tribes did not possess certain regulatory jurisdiction unless it was first granted to them by the Congress or the States, an argument in direct contravention to the logic of the McKenna quote. Fortunately for the tribes, the majority in *Cabazon* was compelled to respond to the dissent by saying, and I quote, "That is simply not the law."

Unfortunately, due to changes on the Court, the *Cabazon* dissent has since garnered a majority on the Court, and the logic of our treaties is being subverted in a way that simply cannot be reconciled with this Nation's first principles. As a result, the tribes and their people have suffered.

In conclusion, I would like to say make note that every term the Supreme Court deals with numerous cases affecting all the tribes, and it is a little-known fact that at times the Supreme Court hears more Indian law cases than any other kind of case. We believe, because of that reason, that it is imperative that nominees to the Supreme Court express their views on these matters and bear an understanding of how this field of law comports with our constitutional jurisprudence, in the hopes that the future jurisprudence of nominees, such as Judge Breyer, on matters affecting tribes will comport with those principles that America stands for.

Thank you very much.

[The prepared statement of Mr. Monet follows:]

PREPARED STATEMENT OF THE NATIVE AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Committee, on behalf of the Native American Bar Association, I thank you for the opportunity to present our views on the nomination of Judge Stephen Breyer for Associate Justice of the Supreme Court.

Mr. Chairman, the Native American Bar Association agrees with the statement offered by the Coalition. Like other racial minorities in our society, Indian people daily confront the effects of racial prejudice and discrimination. Nowhere has the cycle been more difficult to break than in the staid field of the law. However, the Native American Bar Association has certain concerns that are somewhat distinct of those affecting other groups in the coalition.

As you all know, Indian people not only constitute a distinct race in American society, but as members of Tribes many Indian people also constitute distinct political entities recognized as such by the United States. Some of our most pressing issues and concerns arise in that capacity.

The relationship between Tribes and the United States flows from solemn treaties made early in this Nation's history. Remarking upon one of those Indian treaties Justice Black wrote: "Great Nations, like great men, keep their word." In an early interpretation of another one of those treaties Justice McKenna penned a sentence of perhaps singular importance to Tribes and the development of federal law dealing with Tribes. He wrote, "Treaties are to be construed as a grant of rights from the Indians, not to them—and a reservation of those not granted."

We ask the committee and the nominee to note how Justice McKenna's wording and logic reflect the words and logic of the Tenth Amendment to the U.S. Constitution: that what is not granted to the Union in the Constitution is reserved to the States or to the people. In other words like the States and their people, Tribes and their people are the source of the respective Tribes' sovereignty, that whatever sovereignty may have transferred in those treaties came from the Tribes, so that the Tribes were the grantors and thus the reservers of sovereignty. Treaties with Tribes, like the Tenth Amendment, invoke this Nation's highest principles and logic of federal republican democracy.